

STATE BOARD OF LAND COMMISSIONERS

Dirk Kempthorne, Governor and President of the Board
Pete T. Cenarrusa, Secretary of State
Alan G. Lance, Attorney General
J. D. Williams, State Controller
Marilyn Howard, Superintendent of Public Instruction

Stanley F. Hamilton, Secretary to the Board

Final Minutes SPECIAL LAND BOARD MEETING Thursday, August 24, 2000 • 1:30 PM

A special meeting of the Idaho State Board of Land Commissioners was held on Thursday, August 24, 2000 in Boise, Idaho. The Honorable Dirk Kempthorne presided. The following members were present:

Honorable Secretary of State Pete T. Cenarrusa Honorable Attorney General Alan G. Lance Honorable State Controller J. D. Williams Honorable Superintendent of Public Instruction Marilyn Howard

Secretary to the Board Stanley F. Hamilton

Superintendent Howard left the meeting at 4:10 p.m.

CONSENT AGENDA

Director Hamilton provided background information on the Consent Agenda items.

A motion was made by Attorney General Lance to approve the Consent Agenda in its entirety. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 5-0.

1. Official Transactions - approved

- A. Interest Rate Report July 2000
- B. Bureau of Minerals Official Transactions June 2000
- C. Bureau of Range Management and Surface Leasing Official Transactions for Cropland, Grazing, Cottage Site, Miscellaneous and Submerged Land Leases June 2000
- D. Bureau of Real Estate, Easement Section, Official Transactions June 2000
- E. Bureau of Real Estate, Land Sale Section, Official Transactions June 2000
- F. Timber Sale Official Transactions for the Period June 21, 2000 through July 20, 2000

2. Timber Sales – Staffed by Ron Litz, Chief, Bureau of Forest Management – approved

Α.	CR-2-0202	Bodie III	3,050 MBF
B.	CR-2-0217	Shiloh Yahoo	8,000 MBF
C.	CR-4-0699	Clear Creek	3,580 MBF
D.	CR-6-0157	Garden Saddle	5,985 MBF

- **3.** Placer Mine Permit Application 315, Bernard Weber Staffed by Scott Nichols, Chief, Bureau of Minerals approved
- 4. State Participation as a Member of the Clearwater-Potlatch Timber Protective Association Staffed by Brian Shiplett, Chief, Bureau of Fire Management approved

5. State Participation as a Member of the Southern Idaho Timber Protective Association

- Staffed by Brian Shiplett, Chief, Bureau of Fire Management - approved

Idaho Forest Fires

Governor Kempthorne commended everyone fighting fires for their tremendous effort. He commented that it is incredible when you look at the fires and see the mushroom clouds and remind yourself that there are men and women on the fire line fighting those blazes.

The state is now approaching approximately one million acres burned. Governor Kempthorne asked Director Hamilton if it is true that very little of the burned area has been on state ground. Director Hamilton stated that is correct. Up to two weeks ago there was very little state land burned. During the last two weeks there have been two fairly large fires in the Grangeville-Craigmont area. The Maloney Creek fire is currently at approximately 74,000 acres with a perimeter of approximately seventy miles, which includes a stretch of the Salmon River. The Burnt Flats fire was in the 22,000-25,000 acre range and was burning primarily on Forest Service land at the time. Those are the two predominant fires that are on state and private land within the state's protection districts. The rest of the major fires are on either Forest Service or BLM protection districts, which the department also assists. The fires have been expensive.

REGULAR AGENDA

6. Director's Report – Presented by Stanley F. Hamilton, Director, Department of Lands

Principal Fund Balances as of June 30, 2000:

✓ Public School \$552,321,831
 ✓ Pooled \$253,563,333
 ✓ Total \$805,885,164

The Director's Report is provided monthly for the board's information. No action was taken.

6a. Agricultural Burning Restrictions – Presented by Winston Wiggins, Assistant Director, Forestry and Fire, and Brian Shiplett, Chief, Bureau of Fire Management and State Wildfire Coordinator, Department of Lands

DEPARTMENT RECOMMENDATION: The department recommends continuing the current burn ban until conditions improve sufficiently to allow burning. Any relaxation of the current restrictions must be approached with extreme caution.

The following alternatives were considered:

- 1. Remove the restriction on burning permits.
- 2. Grant burning permits based on site-specific conditions.
- 3. Continue the ban on issuing burning permits but seek disaster relief for production loss associated with the inability to burn agricultural fields.

DISCUSSION: In addressing the three options presented, Governor Kempthorne stated that the first alternative is not an option. Addressing the second alternative, Governor Kempthorne stated there is logic in going field by field but the necessary resources are not available. The third option is status quo. Governor Kempthorne commented that there does not appear to be many options in between the three presented.

Attorney General Lance speculated that the agricultural position is that in southern Idaho you may have a stubble field surrounded by beet fields that are all irrigated. Logic would indicate that burning the stubble field would not be a fire hazard depending on conditions. Missing from the equation is input from local fire districts. He asked how the local fire districts would be integrated into the process of examining alternatives. Mr. Wiggins responded that some districts may be willing to assume the responsibility while others may not. There are over 200 rural districts statewide with some local fire districts being voluntary and others being tax supported. The districts have various levels of resources available.

Superintendent Howard referred to a newspaper article from the Post Register. The article states that County Commissioners have been discussing this issue. It appears that there are differing points of view in the various counties with Jefferson and Bingham County Commissioners leaning toward burning and Madison and Fremont counties not wanting to burn.

Director Hamilton added that any activities within incorporated city limits are not subject to the statewide burn restrictions. The statewide burn restrictions would pertain to small rural districts that may not have the capability to deal with a major ground fire. The department is willing to consider any generally thought out area-wide proposal dealing with these types of issues but has not had the opportunity to do so.

AUDIENCE WITH THE BOARD: Mike Everett, Deputy Director, Idaho Department of Agriculture addressed the board. Mr. Everett stated timing is very important. If blue grass growers in northern Idaho do not burn within the next two weeks their yield per acre declines. Also stubble burning is important because water rights do not last much longer.

The Department of Agriculture has looked at the Washington State model regarding stubble burning. Burning is allowed in western Washington and this coming week burning will be allowed in eastern Washington. Washington has set specific criteria to establish an exception-by-exception basis.

The Department of Agriculture has been working for the last year on a voluntary burn ban because of the smoke issues in northern Idaho. Smoke is a huge political issue. By dividing Idaho at a certain point, such as Washington has done in eastern and western Washington, the smoke issue would be much less an issue in southern Idaho than it is in northern Idaho. Mr. Everett would like to see some kind of program using an exception basis.

Mr. Everett feels the manpower issue can be worked out. He stated there are a lot of qualified people who understand how the burning process works. It would be hard work but with the number of farmers involved it would be well worth the effort to find a middle ground that can work for everyone.

DISCUSSION: State Controller Williams suggested that agencies sit down and discuss the possibility of using a by-exception basis. Because Idaho has two different geographical areas, perhaps the Salmon River could be used as a dividing line or certain county lines could be used. Then if local producers make a case that they do have the equipment and knowledge, they could get a permit. But at all times an overriding consideration has to be given to safety as the major issue.

Answering for the Department of Lands, Director Hamilton stated the department has no problem sitting down with the affected parties to work through the issues.

AUDIENCE WITH THE BOARD: Representative Wayne Meyer, District 2, Bonner and Kootenai Counties, addressed the board. Representative Meyer stated a voluntary Smoke Management Plan is in place in Kootenai and Benewah counties. In that voluntary Smoke Management Plan it was

agreed to only burn Monday, Tuesday, Wednesday and Thursday, with no burning conducted on Friday, Saturday and Sunday. Also in that plan, only 14 days are burn days in a 45-day window. The 45-day window is not a problem. The problem is that if the fields are not burned, next year's yield is affected.

Representative Meyer feels that a site-by-site compromise needs to be worked out. He suggested the possibility of using a limited number of acres burned per day based on site-specific criteria. The farmers can call the Department of Lands to report the area to be burned along with calling the local fire district to let them know about the burn.

Regarding air quality, Representative Meyer stated a weather station is operated on a daily basis. Weather balloons are sent up to try to predict whether it is a good day for burning. At that weather station they have the capability to access an air quality monitor. There was one day between the 8th and the 14th when burning was not conducted because the air quality monitor in Sandpoint was significantly high. The farmers did not want to add to the air quality problem.

DISCUSSION: Controller Williams asked Mr. Wiggins what the risks are if the blue grass crops are burned. Mr. Wiggins stated he could not provide an exact numeric breakdown. However he stated the department fights and suppresses at least four to five field burns in northern Idaho every year. Some of those fires are small but others take a lot of resources to suppress. The risks from a grass burn can not be eliminated regardless of the number of people and amount of equipment available. The department does not have any choice in responding. It is the department's responsibility under Idaho Code to respond. At this time resources are not readily available. Staffing is at a minimal initial attack level. The issue is trying to keep down human-caused starts for the near term as much as possible.

AUDIENCE WITH THE BOARD: Glenn Jacklin, Jacklin Seed, a division of Simplot Turf and Horticulture, addressed the board. Mr. Jacklin stated Simplot contracts out about 20,000 acres of grass seed in Idaho. The grass seed is mostly blue grass and most of that grass seed production is in northern Idaho. The major blue grass growing areas are the Camas Prairie, the Coeur d'Alene Reservation and the Rathdrum Prairie. There are approximately 70,000 acres of blue grass industry wide. To use a financial picture, that equals about a \$105 million value at the farm gate level. Using the Idaho economic multiplier of 1.8, the total revenue generated by the Idaho grass seed industry is approximately \$180-\$190 million dollars. The grass burning issue impacts not only growers and farmers but it also impacts processing units, fertilizer dealers and other associated industry businesses.

AUDIENCE WITH THE BOARD: Dave Mossman, Nez Perce Prairie Grass Growers, addressed the board. Mr. Mossman stated that every day that goes by without burning in the next 20 days the grass growers will lose money for next year. Farmers with fields in the middle of the prairie are willing to do whatever it takes to at least get part of those acres burned. One thing the farmers do not want to do is to block all of the burns until the last week of the burning timeframe, which is the second week of September. If all of the fields are burned at once then the farmers are in trouble with the public over smoke problems. The farmers would like to burn at least part of their fields, the safe ones, and put the other burns off for a while. The farmers realize they may not be able to burn those other fields at all this fall if the fire situation stays as bad as it is right now. The farmers feel they have the ability to contain the fires with tractors and other equipment.

AUDIENCE WITH THE BOARD: Bob Branson, Nez Perce Grass Growers, Camas Prairie, addressed the board. Mr. Branson stated he raises other crops but blue grass is about the only crop he can make money on right now. If he is not able to burn his fields, his next year's crop will be affected. Mr. Branson likes the idea of a site-by-site consideration using local controls.

Mr. Branson also wanted to stress the smoke issue. Under current weather patterns there are very few good days to burn. Farmers need to get started with their burning because of the number of acres to burn. Currently farmers are using voluntary guidelines on the Camas Prairie. They also

started using a new guideline this year. The new guideline is a satellite program from the Washington State Department of Ecology. The program monitors air movement and air currents not only at the surface but also at several hundred feet in the air. The satellite tells the farmers when it is a good day to burn so that the smoke will go straight up. Mr. Branson supports the use of local control to burn and then having the farmers burn only on days determined to be "good" days.

Attorney General Lance advised the board that certain interests in northern Idaho have sued the state under the ADA. Air quality and burning are among the issues. At the present time the state is not under a court order and will litigate as necessary. However this lawsuit may come into play at some later date in terms of what the board can and can not do.

AUDIENCE WITH THE BOARD: Jane Gorsuch, Vice President, Idaho Affairs, Intermountain Forest Association, addressed the board. Ms. Gorsuch stated IFA represents timberland owners of all sizes, multi-generational timberland owners and multi-generational Idaho mill operators throughout the state but mainly from Boise north to the Canadian border. Ms. Gorsuch provided a map showing intermixed land ownership patterns. This map is important to IFA because it is on private land areas that most of Idaho forestry takes place.

Ms. Gorsuch stated we are in a fight for our lives for our precious forests in the state of Idaho. The forests are being destroyed at an unprecedented rate. IFA asks that the board stand firm in its resolve to maintain a statewide ban until the mutual emergency has passed. Lifting the statewide ban places Idaho's forest resources, Idaho's people and its firefighters at risk. If the forest were not so dry and our firefighters and resources not stretched so thinly then perhaps site-specific permits could be used. In some cases site-specific permits may work but in other cases issuance of site-specific permits may only add to the risk of additional fire fighting resources being needed or existing resources being stretched even thinner.

Idaho timber represents 11% of the total gross state product, 9% of the total jobs in the state and also represents about \$880 million of union labor. Idaho is consistently among the top ten lumber producing states in the country. Idaho has over 300 forest products plants and 77 lumber mills. A typical mill produces between 20 million board feet and 100 million board feet of lumber each year. Idaho produces over two billion board feet of soft wood lumber and 500,000,000 pounds of paper products. The estimated wholesale value exceeds \$1.5 billion with a secondary wood products market of \$1.1 billion. Timber is not a small section of the Idaho economy.

Ms. Gorsuch stated IFA is committed to helping the board find a solution for this issue. IFA feels it is a huge risk to lift the burn ban because of the possibility of any additional fires.

BOARD ACTION: The board recommended that the Department of Lands meet with other state agencies to work out some type of protocol or operating procedures that includes local input and conditions.

7. Endowment Fund Investment Board Manager's Report – Presented by Charles G. Saums, Manager of Investments

Mr. Saums requested board approval of the FY 2002 budget distribution. The board voiced no objections to the FY 2002 budget distribution as presented. Superintendent Howard was absent during this discussion.

The EFIB Manager's Report is provided monthly for the board's information.

DISCUSSION: Controller Williams requested that Mr. Saums prepare a basic one-page monthly report showing how the board is doing and whether figures are on target. The report could be similar to the Director's Report. This type of report would allow the board to make decisions before the end of the year on issues such as what to do with excess funds in the earnings reserve. Controller Williams offered to assist Mr. Saums in developing the report format.

Governor Kempthorne commented that at the same time each year Mr. Saums should be able to tell the board if there are earnings beyond those anticipated. The board would then have the option of either putting excess funds into the earnings reserve or perhaps expending those funds elsewhere. Mr. Saums stated those figures should be available after books close on June 30 of each year.

8. To Consider State Leasing Activities in Ohio Gulch – Presented by State Controller J. D. Williams and Clive Strong, Deputy Attorney General

DISCUSSION: Deputy Attorney General Clive Strong presented a framework agreement for the board's consideration. The agreement calls for the Land Board to impose certain conditions, which the state's lessees have found acceptable, regarding usage of the road, timeframes, hours of operation and speed limits for safety concerns.

The agreement also sets forth a provision to negotiate terms and conditions for use of the gravel pit that is currently leased to the Idaho Department of Transportation for use on road construction within that valley. That use is of particular concern because the Department of Transportation is about to bid out the road contract and they need to be able to identify in that contract whether it will be a sole source of materials. If it were designated as a sole source for the road materials substantial monies in terms of the contracting would be saved.

The state has worked out an agreement with Blaine County. Although the Commissioners have not acted on the agreement, it is believed they find it generally acceptable. The agreement has been approved by the Blaine County Prosecuting Attorney, with one exception. Blaine County wants assurance that by September 15 the state can negotiate the terms and conditions for the Department of Transportation's use of the gravel pit. The county's request seems reasonable.

Mr. Strong proposed that the Land Board authorize the department to enter into the Memorandum of Agreement. Then the department would move forward and negotiate with Blaine County to reach the terms and conditions that are acceptable to the Department of Lands and the Land Board on a voluntary basis for accommodating particular local interests. The state would not accede to Blaine County's claimed authority to zone this particular land. Rather the agreement would be a voluntary agreement between the Land Board and the local county to accommodate interests. This agreement still allows the state to maximize the return of revenues from those particular state endowment lands within the valley.

Overall the agreement reflects an acceptable condition that can be recommended to the Land Board for both the state and Blaine County. However, Mr. Strong advised the board that there was a letter sent to the Governor by Mr. Ned Williamson. Mr. Williamson represents the private landowners in that particular area. The private landowners still have concerns about the use of these particular gravel pits on state lands and in all likelihood may still choose to sue the state and Blaine County over this issue. It is still felt that this agreement reflects the state's best accommodation of local needs while at the same time being consistent with the board's trust responsibilities.

Mr. Strong stated he has informed Representative Wendy Jaquet and Senator Clint Stennett of the status of this situation and the potential lawsuit. Representative Jaquet recommended that the board proceed with the MOA despite landowner concerns.

BOARD ACTION: A motion was made by State Controller Williams to authorize the Department of Lands to enter into the Memorandum of Agreement and to continue negotiations consistent with the Framework Agreement. Attorney General Lance seconded the motion. The motion carried on a vote of 4-0 with Superintendent Howard being absent for this vote.

9. Reclassification of Endowment Lands Managed in Cooperation with the Andrus Wildlife Management Area – Presented by Tracy Behrens, Range Management Specialist – deferred one month

DEPARTMENT RECOMMENDATION: The department recommends that the endowment lands associated with the AWMA and incorporated into leases G-5056, 5057, 5058 and 5059, currently held by IDFG be reclassified from General Management Zone-Range Grazing to Special Management Zone-Designated Wildlife Management Area. The department further recommends that upon reclassification the current grazing leases be cancelled and the entire block of endowment land be leased to the Department of Fish and Game as one miscellaneous lease with rent of \$16,000 per year, adjusted annually by CPI-U.

AUDIENCE WITH THE BOARD: Mr. Al VanVooren, Supervisor, Southwest Region, Idaho Department of Fish and Game, addressed the board. Mr. VanVooren feels this reclassification and lease is a win-win situation. The Department of Fish and Game attracts sportsmen and recreationists to the Andrus Wildlife Management Area. Those visitors who may have felt that grazing and wildlife management areas are not compatible can now see tremendous wildlife habitat while cattle are grazing. They now have a new perspective.

AUDIENCE WITH THE BOARD: Mr. Bob Howard was granted an audience with the board. While Mr. Howard believes it is a good idea for everyone to cooperate in an agreement like this, he does have concerns about the lease to Fish and Game. Should Fish and Game's administration philosophy change and become anti-grazing, Mr. Howard asked what his ability to address his issues before the board would be. Mr. Howard stated the reclassification and lease "really feels good and looks good on the outside" but he is concerned that he has no protection. Mr. Howard stated he leases ground from four different government agencies and at least twice a year he gets changes from those agencies. Mr. Howard also expressed concern regarding rebiding this lease with Fish and Game.

DISCUSSION: Attorney General Lance asked Mr. Behrens for clarification of the lease. Mr. Behrens responded that the lease would be issued to Fish and Game but would include the provision that grazing would occur under the agreed management plan. Fish and Game would be administering the use most regularly because they have staff on site. But Department of Lands staff would also be involved with the management activity. If there was something that Fish and Game was trying to make Mr. Howard do that he felt was inappropriate, the Department of Lands would be open and receptive to assisting Mr. Howard.

Attorney General Lance stated from a lawyer's perspective, the lease wording would be simple. The lease would be subject to grazing with reasonable rules and conditions and would also be cancelable by the Land Board should the terms and conditions be violated. Mr. Behrens agreed with Attorney General Lance's solution. The grazing management would be a condition of the lease.

Mr. Howard also agreed with Attorney General Lance's wording. Mr. Howard assured the board he was not pointing fingers at anyone, especially not at Fish and Game. In all the government agencies he deals with, Mr. Howard stated you can go up the ladder and get to somebody in grazing. But in Fish and Game there is no one. Mr. Howard stated that Fish and Game staff are wildlife biologists and not grass biologists. He feels if you go up Fish and Game's ladder, it would be against the grazing man. Mr. Howard stated that using Attorney General Lance's wording he feels he would have recourse to come back before the board, if he felt it was necessary.

Mr. Howard stated another issue that is bothering him is that if the lease is given to Fish and Game he will have to renegotiate his lease with Fish and Game or Fish and Game may have to open a new bidding process. Mr. Howard would like some assurance wherein he is the only private individual who can bid on this state lease.

Attorney General Lance commented that the board may be able to issue an annualized lease without public bid again. Mr. Behrens responded there is an Idaho Code provision that allows the Land Board to lease endowment lands to another government agency exclusively if it is in the interests of the public. It is Idaho Code § 58-307 and it does say all state lands may be leased for a period of up to 25 years to federal agencies and state agencies when leased for public purposes. Such leases for public purposes may be entered into by negotiation and shall secure rental amount based on the fair market value of the state land. The rental rate discussed with the Fish and Game is above fair market rental for an AUM lease. It is very difficult to find comparable leasing situations as proposed with Fish and Game. But it is at about the rates negotiated with Fish and Game for previous miscellaneous leases issued for the last two years.

Attorney General Lance asked Deputy Attorney General Clive Strong for his opinion on how to approach this issue. Mr. Strong suggested that the board might consider using the provision cited by Mr. Behrens while also imposing conditions upon the lease that assure the grazing operation continues. Since this is a new issue, Mr. Strong recommended that the board defer this item for one month.

Attorney General Lance requested that this item be deferred until the next regularly scheduled meeting. No objections were voiced.

BOARD ACTION: This agenda item was deferred for one month.

10. Budget Presentation – Presented by Stanley F. Hamilton, Director, and Sheri Wakagawa, Fiscal Officer, Department of Lands

DISCUSSION: Controller Williams asked about the order of the decision units. Specifically he asked about the Real Estate Specialist for Land Exchanges and Sales position, which is number six on the department's list. Director Hamilton responded that prioritization of the decision units has always been a struggle for the department. The department usually only asks for things it really needs. If the board chooses to move a decision unit to the top, the department will do so. Typically the Legislature goes through the decision units and selects the ones they are interested in. Sometimes legislative selection follows the order as given and sometimes it does not.

Attorney General Lance stated he would like to consider Controller Williams' comments and have the ability to adjust or amend the budget at some later date. But in an effort not to impede the Department of Lands in submitting their budget on time he would make a motion for conceptual approval.

BOARD ACTION: A motion was made by Attorney General Lance for conceptual approval of the Department of Lands budget. Secretary of State Cenarrusa seconded the motion. The motion carried on a vote of 3-0 with State Controller Williams, Attorney General Lance and Secretary of State Cenarrusa voting aye; Governor Kempthorne abstained from this vote; Superintendent Howard was absent for this vote.

INFORMATION AGENDA

Director Hamilton briefed the Land Board on the Information Agenda items. No Land Board action is required on the Information Agenda.

11. Timber Sale Activity Report - As of July 31, 2000

Active Contracts 185

Estimated Residual Net Volume 329,420 MBF Estimated Residual Net Value \$106,473,275

12. 2000 Fire Season Update - Comparison to Date of August 24, 2000

YEAR	LIGHTNING	HUMAN	<u>ACRES</u>
2000	110	108	73,866
1999	141	114	501

13. Results of Grazing Lease Auctions

Eastern Idaho Area Grazing Lease Auctions held July 31, 2000:					
Peterson-Nugent	High Bid	\$16,100	submitted by Nugent		
Nugent-Peterson	High Bid	\$42,000	submitted by Peterson		
Finely-Frome-Rhodes	High Bid	\$1,500	submitted by Frome		
Clearwater Area Grazing Lease Auction held August 22, 2000:					
Lacey Meadows Grazing Assoc-IWP	High Bid	\$8,000	submitted by IWP		

Appeals have been filed on this auction by both IWP and the Lacey Meadows Grazing Association.

□ A motion was made by Attorney General Lance to resolve into Executive Session at 5:16 p.m. State Controller Williams seconded the motion. The motion carried on a vote of 4-0 with Superintendent Howard being absent for this vote.

• EXECUTIVE SESSION

- > To Consider Acquiring an Interest In Real Property Which is Not Owned by a Public Agency, Idaho Code § 67-2345 (1)(c)
- > To Consider Litigation and Personnel Matters, Idaho Code § 67-2345(1)(a), § 67-2345(1)(b) and § 67-2345(1)(f)
- □ A motion was made by Governor Kempthorne to resolve into Regular Session at 6:33 p.m. Attorney General Lance seconded the motion. The motion carried on a vote of 4-0 with Superintendent Howard being absent for this vote. Governor Kempthorne emphasized that no decisions were made during the Executive Session.

There being no further business to come before the board, the meeting adjourned at 6:33 p.m.

	IDAHO STATE BOARD OF LAND COMMISSIONERS
	/s/
	President, State Board of Land Commissioners and Governor of the State of Idaho
/s/	
Pete T. Cenarrusa	
Secretary of State	
/s/	
Stanley F. Hamilton	
Director, Department of Lands	

The above-listed final minutes were approved by the State Board of Land Commissioners at the October 10, 2000 regular Land Board meeting.